

Crime Laboratory Commission Meeting

May 24, 2010

Department of Attorney General

150 South Main Street

Providence, RI

3rd Floor Conference Room

10:00 a.m.

In attendance were Gerald J. Coyne, Deputy Attorney General, Rhode Island Department of Attorney General; Christopher Cotta, Rhode Island Department of Attorney General; Director Dennis Hilliard, Rhode Island State Crime Laboratory; Dean Ronald Jordan, University of Rhode Island; Captain LeRoy Rose, Rhode Island State Police; Chief George Kelley, RIPCA; Clay Choquette; Dr. David Gifford, Department of Health; Ewa King, Department of Health; Theo N. Toe, Department of Administration.

I. INTRODUCTION

A. Welcome to Commission Members

Deputy Attorney General Coyne on behalf of the Attorney General welcomed Commission members and called the meeting to order at 10:10 a.m.

B. Approve Minutes of January 28, 2010

All members reviewed the January 28, 2010 minutes, with Chief Kelley making a motion to approve the minutes and Clay Choquette seconding the motion. All members being in favor, the minutes of January 28, 2010 were approved.

II. FUNDING

A. Budget FY2010

In the package distributed to Commission members by Director Hilliard, was a spreadsheet, which showed funding, paid out to date. Originally requested was \$828,000; the Crime Lab received \$675,000 and was subject to a 10% cut, which left a balance of \$607,500, with \$7,782 used to cover the FY09 deficit. We started FY10 with \$599,718 plus the Coverdell Grant, which was \$42,118 and the Byrne Stimulus Grant, which was \$158,345 for a total available of approximately \$808,000. Expenses as of April 26th have been approximately \$420,000. All monies are expected to be used by the end of the fiscal year.

a. Health Department 10% reduction

1. Letter to Dr. Gifford and response

Director Hilliard distributed a copy of the letter that was sent by Attorney General Lynch as Chairman and Dean Jordan as Executive Secretary on behalf of the Commission, to Dr. Gifford dated March 10, 2010; also included was Dr. Gifford's response dated March 22, 2010. The letter addresses the 10% cut, which Director Hilliard felt would be problematic going forward and will have an effect on the firearms section.

Dr. Gifford stated at the meeting in December, Director Hilliard mentioned there was grant funding that would cover the firearms section, so it was not problematic for this fiscal year. The next fiscal year it was level funded. With one person retiring and one person leaving, it has nothing to do with the budget. Department of Health has been very supportive of the Crime Lab and in level funding it, have made cuts in other areas in the department. The 10% cut is not the reason why firearms ballistics cannot be done at the Crime Lab. It's critical and needs to be done and Dr. Gifford agrees with supporting it, but it has nothing to do with the budget issue.

Deputy Attorney General Coyne noted Bob Hathaway made an enormous contribution to the Crime Lab; however, he came here after retiring from Connecticut, so we knew there would be a time when he would retire from here as well. We have also known for several years, as long as our salary structure is as low as it is, we are going to be faced with the challenge of keeping firearm personnel. Deputy Attorney General Coyne's concern going forward is this is the second time we have put people through extensive training only for them to leave. It is something we have to take a very close look at. We have been grappling with this now for over 10 years trying to come up with some solution.

Dr. Gifford noted essentially they are going through the same thing. We train people, they come here and work; however, Rhode Island

being such a small state and there being only 50 Medical Examiner's office in the country, we end up being used as a stepping-stone for elsewhere.

Director Hilliard noted the Criminalist II position was advertised for four weeks at a variety of locations and no one has applied.

Dean Jordan acknowledged this position comes through a grant, therefore, it gets advertised as a limited position of only one year, so for that reason in addition to the salary it's not very attractive. The HR office will only commit grant-funded positions to be listed for the limited period that the current funding exists. Even though this position has been funded since 1980, it still shows it as a limited position. Although it's not really grant funded, the way the money is flowing it looks like a grant.

Dr. Gifford explained the process for a higher salary needs to go through Administration for a public hearing. It can be frustrating especially when you have a limited number of technically trained individuals. You can't just redirect someone and move him or her into that position.

Dean Jordan felt they also have problems itself with the Laboratory regarding salaries. Since his arrival, the discussion has been to bring these salaries in the Laboratory at URI in line with other salaries. We have been trying administratively to bring all the salaries in line so

that we keep everything competitive but have not achieved it. I think if there's a hearing we should be talking about restructuring the way these positions fit together.

Dr. Gifford acknowledged they have the same issue with the Nursing Home statute. There are two different grade levels that are all doing the same work and it's been in arbitration for approximately seven years. Ballistics is the number one issue and needs to get done. If we need to get a higher salary Dr. Gifford would be happy to take it to DOA and make a request for a hearing and advocate for it.

Dr. Gifford noted right now across state government everyone is down and are not getting the funding they are asking for. We all have to buckle down during the current fiscal situation.

b. Byrne/JAG Stimulus Grant

Director Hilliard spoke regarding the monies from the Byrne Grant, which was being used to fund two firearms positions and the NIBIN Technician. Due to the fact there is no longer any firearm personnel, currently the only position being paid is the NIBIN Technician. We expect there to be some carryover and possibly use the monies for other positions, such as hiring one or two retired police officers to assist with firearm test fires.

c. Coverdell Grant – FY09

Director Hilliard noted the Coverdell Grant money and some funds from the budget were used to fund the Crime I Quality Officer and made it a full-time position.

B. Budget FY2011

In the package distributed to Commission members by Director Hilliard was also information regarding FY2011. Director Hilliard estimated \$868,178 with all positions filled. The Crime Lab budget for FY2012 is recommended by the Governor and placed in the DOH budget at \$675,000 and this will necessitate doing without three positions. Also, may move the Quality Officer from a full-time to a part-time position, using 100% Coverdell funds.

There is also a revised salary for the Criminalist II Firearms position. We removed the second firearms position, which was recently upgraded to Criminalist I, due to lack of funding. There will be additional costs because even if we were able to hire a new person at that level, we would still need to have their reports reviewed by another qualified examiner. We would have to use Connecticut, Massachusetts or bring in an outside agency. From Director Hilliard's point of view the \$675,000 will be problematic.

a. Estimated Need v. DOH request

1. Request to move allocation from DOH budget to URI budget

Theo Toe spoke regarding appropriating the fund as expenditure by reclassifying it as a resource transfer from the general funds to the University and College funds where Public Higher Education is. That has not been done for the current year and the budget year 2011.

Although this is my own personal proposal and the budget officer

may have a different position, moving forward to FY12 the representation I am happy to make before the Commission is that for FY12 when the budget office has completed the resource estimate, we will hold harmless the funding that has been allocated to the Crime Lab. For 2011 we have \$675,000, if that gets enacted by the General Assembly and gets signed into law by the Governor that money come 2012, when I do the resource estimate for the Department of Health I'm going to set that money aside as a hold harmless item for 2012. However, I do have a boss I answer to who may not agree to the proposal. It's a possibility that I could be told not to hold the funding.

Dean Jordan felt it that may not solve the fact that it still reaches URI as a grant.

Theo Toe agreed with Dean Jordan, so one of the other options that he proposed to Director Hilliard as well is the Department of Health would have the program transferred over to Public Higher Education.

Dean Jordan thought if you put it directly into the college budget like other things that we have it would avoid that problem. It wouldn't go through the Grant Accounting office. We could probably advertise the position as not limited and we would be better off in the long run.

Theo Toe stated the financial resource would then fall under the control of URI through Public Higher Education. We can submit a

sample budget article for the supplemental budget for 2011. It could be included as part of the Governor's Supplemental Appropriations Bill to have the Crime Lab transferred from the Department of Health, provided that Dr. Gifford consents to it and have it transferred over to Public Higher Education.

Dr. Gifford felt as far as moving over, we had a meeting with Attorney General Lynch and President Dooley of the University and believed the plan was to try and figure out how to take it back in the year 2012. If President Dooley and the Attorney General think it's easy and okay to do it in 2011, then it's their cause. Not hearing otherwise, Dr. Gifford assumes we're going on 2012 with the timeline to do it with a new Governor.

Dean Jordan felt the objective is to do what we need to do to get this ballistics problem handled. I would advise the President if we could do this in 2011 through the supplemental then we could get the job posted at URI as a permanent position.

Deputy Attorney General Coyne questioned going forward is the goal to ask for a special hearing?

Dean Jordan stated he will get the request to the Board of Governor's Higher Education done and with Deputy Attorney General Coyne's help write a letter and try and get it on their agenda as soon as possible.

2. State Budget Office, House Fiscal Staff, House Finance Committee
Director Hilliard had meetings with the state budget office, house
fiscal staff and others and also testified before the House Finance
Committee on May 4th.

b. Byrne/JAG Stimulus Grant

The Byrne/JAG Stimulus Grant was being used to support both
firearms positions and the NIBIN Tech position. As of April both
firearm positions became vacant and the Tech position is the only
position currently being funded. The remainder of the funds could
possibly be used to hire a retired police officer to assist in test firing
and to train a new NIBIN Tech, due to the fact that Mike Ayer will be
leaving in August. No additional funding will be available from this
source.

c. Coverdell Grant – FY10

Director Hilliard mentioned the funding this year would be split
between the State Crime Laboratory, Department of Health Forensic
Science Laboratory, Department of Health Medical Examiner and
Rhode Island State Police Criminal Identification Unit.

Also, local police departments that have a forensic unit, which is an
investigator that does criminal investigation work, could apply for
that money as well. They don't have to be accredited.

Coverdell historically has been a grant set aside to improve forensic science laboratories. The definition of forensic unit gets expanded to the local police departments who do the crime scene work and collect the evidence and in some cases like the State Police, Pawtucket, Warwick, Providence process some of the evidence themselves. They don't do the comparisons; however they've done some of the preliminary work to get the evidence to a point where an expert can analyze it and then the testimony would be given.

III. LABORATORY STATUS

A. Laboratory Progress Report – January 1 to March 31, 2010

There was an increase in casework. We receive 124 cases by this time last year; we have received 161 cases to date this year. We have seen increases in Providence, Newport, East Greenwich, East Providence, Cranston, State Fire Marshal's office as well as Johnston.

a. Firearms Section update

Director Hilliard stated they are not taking firearm cases for comparative purposes.

Clay Choquette questioned what are the police departments doing if they have a homicide with a gun?

At the moment, Director Hilliard noted they are holding it.

Clay Choquette felt perhaps the police chiefs need to send a letter to

the Senators and Congressman and hopefully it will make a difference and change.

Director Hilliard went to the Rhode Island Police Chiefs' Association meeting on May 18th and explained to them the situation in terms of firearms. They did agreed to send a letter in support for our budget to the House Finance Committee and to the Senate.

LeRoy Rose mentioned the State Police would be asking the Massachusetts State Police and Connecticut State Police for their help; however, it will only be on a major case.

Director Hilliard has spoken to Massachusetts State Police who will take cases on an as needed basis; with Connecticut accepting cases where there is a police involved shooting. Maine State Police have offered to help on an as needed basis; the FBI will accept firearm cases directly from the agency. They are talking about a 90-day turnaround minimum, if it only comes down for firearms analysis. ATF has to be invited into the case, they would have to agree to accept it as a joint operation and then they could bring it to the lab. Currently the FBI has eight examiners, four of which are in training, so it is a bad time for them also.

B. ISO/IEC Accreditation

a. Surveillance Report April 2010

Director Hilliard noted there was a desk audit in April for

re-accreditation with no findings. The cost was \$3,500; \$500 for the application and \$3,000 for the review.

b. Re-accreditation April 2011

We are on a four-year cycle and will need re-accreditation in April 2011. This will cost approximately \$10,000 for an on-site audit.

C. Systems Updates

a. NIBIN Update

Mike Ayer was on military leave and will be returning within the week. He told Director Hilliard that he believes he met the minimum number of entries for January – March and will be able to meet the minimum for April – June. He will be leaving in August to be deployed with the National Guard. A new NIBIN person will need to be trained. It is a part-time position being paid for out of the stimulus money. When the stimulus money runs out there are no funds to pay this position.

b. AFIS Update

Numbers are up over last year due to increased submissions for B&E's and larceny cases.

D. Laboratory Personnel

a. Clerical position

The clerical position will be left vacant.

b. Quality Assurance Officer position

The Quality Assurance Officer will be moved to a part-time position if we cannot get funding.

c. Staff Salary Upgrades Comparison to DOH

Director Hilliard spoke regarding the staff salary upgrades. Two positions were upgraded in the laboratory effective as of March 13, 2010. The Technician I to a Criminalist I and Criminalist I to Criminalist II; however Director Hilliard noted it is not just the firearm positions that need to be upgraded. Director Hilliard supplied to Commission members the pay schedule for Professional Staff Association (PSA) at URI, Grades 10, 11, 12 and also a sheet of comparison salary analysis from DOH in 2007. Criminalist I would be consistent with Forensic Scientist; Criminalist II would be Senior Forensic Scientist and Criminalist III would be the Supervising Forensic Scientist. There is a significant difference in salary being paid to the current individual versus what is being paid in the salary grade for URI. There are no automatic steps in URI pay scale.

Understanding the differences between the steps and longevity, Dr. Gifford felt if numbers are going to be compared, then compare apples to apples, this a bit misleading to present it this way. Dr. Gifford would be happy to get the information needed to Director Hilliard.

Dean Jordan noted they will work on creating a better comparison.

IV. NEW BUSINESS

A. Items from the floor

Director Hilliard was nominated to the Whitehouse subcommittee on Forensic Science. Also included in your package was an article in

which a U.S. Judge is inviting defense lawyers to challenge the validity of all forensic science evidence, along with the letter that Director Hilliard wrote to Senator Whitehouse in terms of promoting forensic science in the Judiciary Committee.

The National Academy Study has pushed the U.S. Senate to try to create some sort of over arching umbrella to bring everyone into compliance. To have the same standards, the same procedures, the same methods that they are using. What the National Academy Study found is that there is a plethora of different types of analysis that is going on throughout the country and nothing is standardized.

In the Senate Judiciary where Senator Whitehouse serves, there is a push to create a Forensic Science Bill. This will move to accredit forensic units and certify people who are going to testify in court to forensic comparison. If you are going to go to Court to testify as an expert your unit may have to be accredited and the analysts will need to be certified.

Deputy Attorney General Coyne asked the status on any money coming from U.S. Attorneys?

Director Hilliard hasn't heard of any funding coming from the U.S. Attorney's office at this time; however, will check into it.

Deputy Attorney General Coyne made a motion to adjourn, with all

members being in favor, the meeting was adjourned at 11:10 a.m.

Minutes taken and transcribed by:

Teresa A. Dorrance, Department of Attorney General